

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**DONNY T. HATCHETT,**

**Plaintiff,**

**v.**

**No. 13-cv-1183 MCA/SMV**

**UNITED PARCEL SERVICE, INC.,  
and MICHAEL VANCE GILLAM,**

**Defendants.**

**ORDER**

THIS MATTER is before the Court on the Order Overruling Objections [Doc. 43], issued on July 18, 2014, by the Honorable M. Christina Armijo, Chief United States District Judge, who is presiding over this case. Pursuant to her Order, I will reset the deadline for completion of the Rule 35 examination as 5:00 p.m. on September 2, 2014.

Also before the Court are Defendants' Motion for Extension of Time to File Rule 26(a)(2) Expert Disclosures [Doc. 34], filed on June 6, 2014, and Defendants' Motion to Amend Scheduling Order [Doc. 42], filed on July 7, 2014. The Court has considered the motions<sup>1</sup> and the record and, being otherwise fully advised in the premises, finds that the Motion for Extension of Time [Doc. 34] should be granted, and the Motion to Amend the Scheduling Order [Doc. 42] should be denied without prejudice.

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<sup>1</sup> Plaintiff did not respond to the Motion for Extension of Time [Doc. 34], and the time for doing so has passed. Plaintiff has not responded to the Motion to Amend the Scheduling Order [Doc. 42], but no response is needed.

### Background

After meeting with counsel for the parties at a Rule 16 scheduling conference on February 5, 2014, [Doc. 14], the Court issued a Scheduling Order [Doc. 15]. Defendants had until June 5, 2014, to identify in writing any expert witness to be used at trial and to provide expert reports pursuant to Fed. R. Civ. P. 26(a)(2)(B). *Id.* at 1–2. On April 25, 2014, Defendants moved to compel Plaintiff to submit to a physical examination by Dr. Richard Radecki pursuant to Fed. R. Civ. P. 35. [Doc. 19]. I granted the motion to compel the Rule 35 examination on June 12, 2014. [Doc. 36]. However, Plaintiff objected to my order on several grounds. [Doc. 40]. On July 18, 2014, Chief Judge Armijo overruled the objections. [Doc. 43]. Consistent with her order, I will designate September 2, 2014, at 5:00 p.m. as the deadline by which the Rule 35 examination must be completed. *See id.* I will also extend Defendants' expert-report disclosure deadline to September 17, 2014.

Defendants have further requested that the Scheduling Order [Doc. 15] be amended because “[d]epending on the results of the Rule 35 examination . . . Defendants *may* need additional time to complete discovery, to file discovery motions, and to file appropriate pretrial motions.” [Doc. 42] (emphasis added). The request is premature. If Defendants, or Plaintiff, finds that the scheduling deadlines should be extended, an appropriate motion may be filed at that time.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that, consistent with Chief Judge Armijo's Order [Doc. 43], the Rule 35 Examination that shall be completed no later **5:00 p.m. on September 2, 2014**.

**IT IS FURTHER ORDERED** that Defendants' Motion for Extension of Time to File Rule 26(a)(2) Expert Disclosures [Doc. 34] is **GRANTED**. Defendants' deadline to identify in writing any expert witness to be used at trial and to provide expert reports pursuant to Fed. R. Civ. P. 26(a)(2)(B) is EXTENDED to **September 17, 2014**.

**IT IS FURTHER ORDERED** that Defendants' Motion to Amend Scheduling Order [Doc. 42] is **DENIED without prejudice**. After expert reports have been served, if a party would like to request an extension of the discovery deadline or other related deadlines, such party may file a motion that complies with D.N.M.LR-Civ. 7.1(a).

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
United States Magistrate Judge